COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

No. FAR-25867

ESWIN HERNANDEZ-LEMUS
Plaintiff-Appellant

v.

MARIA ESPERANZA ARIAS-DIAZ
Defendant-Appellee

Further Appellate Review

PLAINTIFF-APPELANT'S APPLICATION FOR FURTHER APPELLATE REVIEW

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February 12, 2018

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I. REQUEST FOR LEAVE TO OBTAIN FURTHER APPELLATE REVIEW

The Judge at the Suffolk County Probate and Family Court failed to apply the correct standard pursuant to 8 U.S.C. 1101 § (a)(27)(J), and pursuant to this Honorable Court's decision on June 9, 2017 Docket No. SJC-12138, as hereby attached, establishing that "The Probate and Family Court judge must make factual findings as to all these prongs of the special findings analysis under all circumstances when it applies to Motion for Special Findings." Furthermore, "the immigrant child's motivation is irrelevant to the judge's Special Findings, and...the judge's obligation to make special findings applies regardless of whether the child presents sufficient evidence to support a favorable finding under each of the criteria set forth in 8 U.S.C. § 1101 (a)(27)(J)."

The Judge declined to make any factual findings with respect to Plaintiff's Motion for Special Findings.

The Appeals Court concluded that the probate Judge's findings and disposition are supported by that record.

Plaintiff-Appellant requested Further Appellate Review.

II. STATEMENT OF PRIOR PROCEEDINGS

This appeal arises from the Complaint for Support-Custody-Visitation proceedings in the Suffolk County Probate and Family Court. On October 2, 2015, Eswin Hernandez-Lemus (hereinafter "father") filed a Complaint for Support-Custody-Visitation, seeking custody of his son, and requesting that the Court enter special findings of fact and rulings of law. The Court granted sole legal and physical custody of the minor child Edwin E. Hernandez-Arias ("hereinafter "Edwin"), but declined to enter special findings of fact and rulings of law.

The requested special findings are a prerequisite for Edwin to apply to the United States Citizenship and Immigration Services ("USCIS") for Special Immigrant Juvenile Status ("SIJS"). 8 U.S.C. § 1101 (a)(27)(J).

The required findings from the Suffolk County Probate and Family Court are necessary to avail Edwin of the benefit of the federal legislation by establishing the following:

1. The Minor is declared dependent upon the state court for his care and protection or has been placed under the custody of an individual or entity appointed by a State or Juvenile Court;

2. Reunification with one of the minor's parents is not viable due to abuse, neglect, abandonment or similar basis under state law; and

3. It is not in the best interests of the minor child to be returned to his country of origin. See 8 U.S.C. § 1101 (a)(27)(J).

The Judge at the Suffolk County Probate and Family Court failed to apply the correct standard pursuant to 8 U.S.C. § 1101 (a)(27)(J).

If allowed to stand, the erroneous decision will expose Edwin to potentially being deported to his neglectful mother, Maria Esperanza Arias-Diaz (hereinafter "mother") despite Edwin's eligibility for immigration relief.

On February 9, 2016 the Judge issued her decision granting the Father sole legal and sole physical custody, but declined to enter the motion for special

findings. RA 13. The Court issued the following findings:

> The parties are the parents of soon to be age eighteen (18) year old Edwin. The plaintiff has filed the above referenced complaint pursuant to which he has requested that he be granted custody of his son.
>
> The mother is not contesting that the father has custody. The father left the child in Guatemala with the child's sister, mother and grandmother to live in the United States when the child was one year old.
>
> However, he always sent money for the support of the child. The Court finds such behavior neither to be neglectful nor to constitute an abandonment of the child. The mother left the child with the grandmother when he was ten and she also moved to the United States.
>
> Several years ago the child moved to the United States to be with the father, with whom he has resided since 2012.
>
> The child is now on the verge of manhood and will turn age 18 this month. While the child may have good reason to not want to return to Guatemala, the Court declines to enter special findings under these circumstances.
>
> By granting the father custody of the child until his 18th birthday, the Court treats this child as it would any other soon to be eighteen year old child born of a parent who resides in the United States.

Father hereby appealed and asked that The Appeals Court vacate the Probate and Family Court's denial, and allow the motion for special findings in full nunc

pro tunc. In the alternative, Father requests that the decline to enter the motion for special findings be vacated and the case remanded for a new hearing so the judge can make factual findings as to all three prongs of the special findings analysis pursuant to decision of SJC-12138, Guardianship of Yosselin Guadalupe Penate Department of Revenue vs. Manuel Morales Lopez & Another (2017).

On November 30, 2016, Appellate proceedings on this case were stayed pending the Supreme Judicial Court's decision on SJC-12138, In re Guardianship of a Minor, which was scheduled to be argued in January 2017, and had issues similar to those raised in this case. See hereby attached decision of SJC-12138, Guardianship of Yosselin Guadalupe Penate. Department of Revenue vs. Manuel Morales Lopez & Another (2017).

III. SHORT STATEMENT OF FACTS

Edwin was born in Guatemala on February 16, 1998. He lived with his father until Edwin was one (1) years old. Edwin then lived with his mother, sister and grandmother.

Edwin's mother, Maria Esperanza Arias-Diaz, neglected Edwin by failing to adequately care for Edwin and not providing him with the basic daily necessities. Edwin became the victim of constant gang violence in Guatemala. Mother abandoned Edwin at the age of ten (10) years old. Mother moved to California and failed to provide for Edwin's daily basic needs.

Edwin lived in constant fear of the dangerous gangs. In the Spring of 2012, Edwin was faced with a knife being held to his chest while being robbed. The gang members told Edwin that if they saw him again they would kill him.

Edwin began missing school because it was too dangerous for him to walk to and from school. Father arranged for Edwin to travel to the United States.

In May of 2012, Edwin traveled with a guide to the United States. During the trip Edwin had endured the difficulties of the crossing and did not have enough food and water. Eventually, Edwin arrived in the United States and immigration officials released Edwin to father's custody. Father had been residing in the United States and Edwin was placed in removal proceedings.

While in Father's care Edwin returned to school and has a stable life where he is being properly cared for and feels safe.

Edwin is learning English and is excited about finishing high school with the hope to pursue his education and attend college. If Edwin were to be returned to Guatemala he would continue to endure the gang violence he suffered prior to leaving for the United States.

On October 2, 2015, father on Edwin's behalf filed a Complaint for Custody/Support/Visitation and a motion for special findings of fact and rulings of law.

IV. STATEMENT OF POINTS TO WHICH FURTHER APPELLATE REVIEW OF THE DECISION OF THE APPEALS COURT IS SOUGHT

Pursuant to Guardianship of Yosselin Guadalupe Penate, this Court stated that, "Whether a child qualifies for SIJ status and whether to grant or deny an immigrant child's application for SIJ status beyond the jurisdiction of the Probate and Family Court. The State court's role is solely to make the special findings of fact necessary to the USCIS's legal

determination of the immigrant child's entitlement to SIJ status." 8 U.S.C. § 1101 (a)(27)(J)(iii).

Because the fact-finding role is integral to the SIJ process, the Probate and Family Court judge may not decline to make special findings if requested by an immigrant child under 8 U.S.C. § 1101 (a)(27)(J).

This Court further stated that, "Acting within the limits of this fact-finding role, the judge must make the special findings even if he or she suspects that the immigrant child seeks SIJ status for a reason other than relief from neglect, abuse, or abandonment."

In this case the Judge simply declined to issue findings as to the dependence on the Probate and Family Court and best interests prongs of the special findings in accordance with the standard 8 U.S.C. § 1101 (a)(27)(J). As such, further appellate review is required for: 1) the Judge's failure to apply 8 U.S.C. § 1101 (a)(27)(J), 2) the Judge's failure to issue findings pursuant to *Penate* on all three prongs, 3) the judge's failure to properly analyze evidence of neglect with respect to the mother in this case.

V. BRIEF STATEMENT

This Court concluded in the Guardianship of Yosselin Guadalupe Penate Docket Number SJC-12138 that, "a Probate and Family Court judge, if requested by an immigrant child under 8 U.S.C. § 1101(a)(27)(J), may not decline to make special findings of fact necessary to the legal determination by the United States Citizenship and Immigration Services of that child's entitlement to special immigrant juvenile status under that statute; further, this court concluded that the immigrant child's motivation is irrelevant to the judge's special findings, and that the judge's obligation to make special findings applies regardless of whether the child presents sufficient evidence to support a favorable finding under each of the criteria set forth in 8 U.S.C. § 1101 (a)(27)(J); finally, this court directed that the special findings be limited to the parent with whom the child claims reunification is not viable due to abuse, neglect, or abandonment."

The Suffolk Probate and Family Court plays an important role in the SIJS process as, in the absence of state Court findings; the minor is categorically ineligible for SIJ. See 8 U.S.C. § 1101 (a)(27)(J).

The elements in this case were met. The Court improperly declined to make the findings required under the statute. The Court's failure to correctly determine Edwin's best interests was an error of law, fact or both.

The Suffolk County Probate and Family Court Judge improperly and erroneously interpreted the following statute:

8 U.S.C. § 1101 (a)(27)(J) which calls for a determination of the following:

1. The Minor is declared dependent upon the state court for his care and protection or has been placed under the custody of an individual or entity appointed by a State or Juvenile Court;
2. Reunification with one of the minor's parents is not viable due to abuse, neglect, abandonment or similar basis under state law; and

3. It is not in the best interests of the minor child to be returned to his country of origin.

The Judge failed to issue findings in accordance with the standard. 8 U.S.C. § 1101 (a)(27)(J).

1. The Judge granted custody to father.

2. The Judge failed to determine whether the evidence submitted supported father's position that mother was neglectful in accordance with the code of Massachusetts Regulations as she had failed to provide for Edwin's basic needs such as food, clothing and medical care. The Judge simply ignored and/or misinterpreted the facts as presented.

Pursuant to the standard that only one parent needs to be found guilty of neglect. See 8 U.S.C. § 1101 (a)(27)(J).

3. The fact that the father sent money for the child has no bearing on this matter since the allegation of neglect was made against mother only. There was no claim of neglect on the part of father. The Judge in this case completely misinterpreted the facts. The argument was based on mother being neglectful and, in accordance with the Code of Massachusetts Regulations definition, mother was

neglectful. See 110 Code Mass. Regs. § 2.00. The Judge's finding that the child is on the verge of "manhood" is also irrelevant as to the issuance of a proper analysis for special findings. See 8 U.S.C. § 1101 (a)(27)(J).

Even if the Judge determined that Edwin did not meet the standard, the Judge failed to issue proper findings.

For the reasons above, Eswin Hernandez-Lemus, respectfully requests that this Court enter an order that:

1. Edwin Hernandez-Arias, born on February 16, 1998, is an unmarried juvenile ward under the laws of the Commonwealth of Massachusetts. Said child currently resides in Chelsea, Massachusetts.

2. Edwin Hernandez-Arias declared dependent upon the Massachusetts Probate and Family Court, Suffolk Division, relative to these custody proceedings.

3. Reunification of Edwin Hernandez-Arias with his mother Maria Esperanza Arias-Diaz is not viable due to her abandonment and neglect.

4. It is not in Edwin Hernandez-Arias's best interests to be returned to Guatemala, the country of his nationality, as his mother is unable to provide for his care and protection.

5. It is in the best interest of Edwin Hernandez-Arias to remain in the United States under the care of his father, Eswin Hernandez-Lemus.

In the alternative, appellant asks that the decision of the Probate and Family Court be remanded for a hearing with specific instructions.

Respectfully submitted,
Eswin Hernandez-Lemus and
Edwin Hernandez-Arias,
By their attorney,

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COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT DEPARTMENT
PROBATE AND FAMILY COURT

SUFFOLK, SS. DOCKET NO. SU15W-1990-WD

ESWIN HERNANDEZ-LEMUS,
Plaintiff

v.

MARIA ESPERANZA ARIAS-DIAZ,
Defendant

JUDGMENT
on Complaint for SUPPORT-CUSTODY-VISITATION
filed on October 2, 2015

After hearing at which the plaintiff father appeared and the defendant mother did not, and upon review of the pleadings and consideration of the representations and proffered evidence, it is adjudged:

1. The plaintiff father shall have sole legal and sole physical custody of the minor child of the parties: EDWIN E. HERNANDEZ-ARIAS (born February 16, 1998) to the extent permitted by law.

2. As the defendant mother – who was properly served – did not participate in this hearing, she is presumed not to be contesting custody.

3. For the foregoing reasons, the above judgment shall enter.

Findings and Memorandum of Decision.

The parties are the parents of soon to be age eighteen (18) year old Edwin. The plaintiff has filed the above referenced complaint pursuant to which he has requested that he be granted custody of his son. The mother is not contesting that the father has custody. The father left the child in Guatemala with the child's sister, mother and grandmother to live in the United States when the child was one year old. However, he always sent money for the support of the child. The Court finds such behavior neither to be neglectful nor to constitute an abandonment of the child. The mother left the child with the grandmother when he was ten and she also moved to the United Sates. Several years ago the child moved to the United States to be with the father, with whom he has resided since 2014. The child is now on the verge of manhood and will turn age 18 this month. While the child may have good reason to not want to return to Guatemala, the Court declines to enter special findings under these circumstances. By granting the father custody of the child until his 18th birthday, the Court treats this child as it would any other soon to be eighteen year old child born of a parent who resides in the United States.

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So Ordered and Adjudged.
February 1, 2016
after hearing on February 1, 2016

Virginia M. Ward, Associate Justice

SJC-12138
SJC-12184

GUARDIANSHIP OF YOSSELIN GUADALUPE PENATE.

DEPARTMENT OF REVENUE[1] vs. MANUEL MORALES LOPEZ & another.[2]

Suffolk. January 6, 2017. - June 9, 2017.

Present: Gants, C.J., Lenk, Hines, Gaziano, Lowy, & Budd, JJ.

Alien. Probate Court, Jurisdiction. Jurisdiction, Probate Court.

Petition for appointment of a guardian filed in the Suffolk Division of the Probate and Family Court Department on September 14, 2015.

A motion for special findings of fact was heard by Virginia M. Ward, J.

The Supreme Judicial Court on its own initiative transferred the case from the Appeals Court.

Complaint to establish paternity filed in the Suffolk Division of the Probate and Family Court Department on November 25, 2014.

A motion for special findings of fact was heard by Virginia M. Ward, J.

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[1] On behalf of Norma Cecilia Mauricio Guzman.

[2] E.G. (a pseudonym), interested party.

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The Supreme Judicial Court on its own initiative transferred the case from the Appeals Court.

Valquiria C. Ribeiro for Marvin H. Penate.
Jennifer B. Luz (Joshua M. Daniels also present) for E.G.
Elizabeth Badger for Kids in Need of Defense & others, amici curiae.
The following submitted briefs for amici curiae:
Benjamin C. Mizer, Principal Deputy Assistant Attorney General, William C. Peachey, Erez Reuveni, & Joseph A. Darrow, of the District of Columbia, for the United States.
Mary K. Ryan & Meghan S. Stubblebine for American Immigration Lawyers Association, New England Chapter, & others.

HINES, J. In these appeals brought by E.G., an eight year old undocumented immigrant from Guatemala, and Yosselin Guadalupe Penate, a nineteen year old undocumented immigrant from El Salvador, we consider for the second time[3] the statutorily mandated role of the Probate and Family Court (and the Juvenile Court) in a juvenile's application for special immigrant juvenile status (SIJ) under 8 U.S.C. § 1101(a)(27)(J) (2012). Congress established the SIJ status classification "to create a pathway to citizenship for immigrant children," Recinos v. Escobar, 473 Mass. 734, 737 (2016), who have been abused, neglected, or abandoned by one or both parents. The issue presented in these appeals is whether a judge may decline to

[3] See Recinos v. Escobar, 473 Mass. 734, 739-743 (2016) (recognizing Probate and Family Court jurisdiction to make special findings under 8 U.S.C. § 1101[a][27][J] [2012], in cases involving persons between eighteen and twenty-one years of age).

make special findings based on an assessment of the likely merits of the movant's application for SIJ status or on the movant's motivation for seeking SIJ status. The judge implicitly determined that neither child would be entitled to SIJ status based on her interpretation of the statute and declined to make special findings. This was error.

We now clarify the role of the judge with respect to a juvenile's motion for special findings necessary to apply for SIJ status under 8 U.S.C. § 1101(a)(27)(J). Because immigration status is a matter solely within Federal jurisdiction, the merits of a juvenile's application for SIJ status will be determined in immigration proceedings in accordance with Federal law. See Recinos, 473 Mass. at 738. Under the statute, the judge's sole function is to make the special findings, and to do so in a fashion that does not limit Federal authorities in determining the merits of the juvenile's application for SIJ status. Therefore, we conclude that on a motion for special findings, the judge shall make such findings without regard to the ultimate merits or purpose of the juvenile's application. To avoid any unnecessary entanglement in interpreting whether SIJ status requires a showing of neglect or abandonment by one

or both parents, we also conclude that the judge shall make special findings only as to the parent named in the motion.[4]

Background.[5] 1. Yosselin Penate. Yosselin[6] was born in 1997 in El Salvador to Marleny D. Penate-Velasquez. The father abandoned Marleny before Yosselin was born, and is not listed on her birth certificate. Yosselin has never had any contact with her father and does not know his identity. Until her teenage years, Yosselin lived in a small house with her mother, grandfather, uncle, three brothers, and two cousins. Of the adults living in the household, only Yosselin's uncle was employed. Having his own children to provide for, the uncle's income was rarely sufficient to cover food and clothing for Yosselin and her siblings.

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[4] We acknowledge the amicus brief submitted by the United States in E.G.'s case in support of neither party; and the amicus briefs submitted in each case in support of the appellants by the American Immigration Lawyers Association, New England Chapter; the Boston College Immigration Clinic; the Catholic Charitable Bureau of the Archdiocese of Boston, Inc.; the Central West Justice Center; the Children's Law Center of Massachusetts; Community Legal Services and Counseling Center; Greater Boston Legal Services; the Immigration Legal Assistance Program of Ascentria Care Alliance; Justice Center of Southeast Massachusetts; Kids in Need of Defense; Massachusetts Law Reform Institute; MetroWest Legal Services; and the Political Asylum/Immigration Representation Project.

[5] We recite the facts as drawn from the limited record before us.

[6] Because Yosselin and her uncle Marvin share a last name, and her mother's last name is similar, we refer to the family members by their first names.

Because her mother was unemployed, Yosselin did not have access to medical treatment. At age fourteen, Yosselin took a job to help with family expenses. While working, Yosselin continued to attend school, but her job responsibilities frequently prevented her from completing her homework. Although she added to the family's income, Yosselin's living conditions remained poor. In 2013, when Yosselin was fifteen years of age, she began receiving death threats from a local gang. The gang demanded that she either join the gang or be killed. Because Marleny was unable to properly provide financial resources for Yosselin or protect her from the gang, Marleny determined that it would be best for the family if Yosselin left for the United States to live with her uncle, Marleny's brother, Marvin H. Penate, who lives in Massachusetts. In accordance with her mother's wishes, Yosselin traveled to the United States and has lived with Marvin in Revere since that time. Since her arrival in the United States, Yosselin has had access to proper medical care, is enrolled in school, and has adequate food and clothing. Although Yosselin remains in contact with her mother in El Salvador, she wishes to continue living with Marvin in the United States.

In September, 2015, when Yosselin was seventeen years of age, Marvin filed a petition in the Probate and Family Court seeking guardianship of her, and she then filed a motion seeking

the requisite special findings for SIJ status. In her motion for special findings, Yosselin asserted that she was dependent on the Probate and Family Court, that reunification with her mother was not viable due to neglect, and that return to El Salvador was not in her best interests.[7] Following a short hearing, the Probate and Family Court judge issued a written decision, dismissing the guardianship petition and declining to make special findings as to the first and third prongs. With respect to the second prong, the judge stated, "The sole problem here is that [Yosselin] must find a legal way to re-enter this country if in fact she is deported. This [c]ourt does not find that 'reunification with one or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or similar basis found under State law' 8 U.S.C. § 1101(a)(27)(J)." Marvin appealed from this decision, and we transferred the case to this court on our own motion.

2. E.G. E.G. was born in Guatemala in 2008 to Norma Cecilia Mauricio Guzman. After finding out that Guzman was pregnant, E.G.'s father, Manual Morales Lopez, abandoned Guzman, and he moved to the United States before E.G. was born. Following his move to the United States, Lopez made no effort to contact or take care of E.G. and offered Guzman negligible

[7] Yosselin filed a second motion for special findings in December, 2016, asserting neglect and abandonment by her father. That motion is pending in the Probate and Family Court.

financial support. After E.G.'s birth, Lopez stopped providing financial support altogether. Because Lopez ignored Guzman's efforts to inform him of E.G.'s birth and had no relationship with E.G., Guzman did not list Lopez on E.G.'s birth certificate.

During the early years of E.G.'s life, she and her half-brother were raised by their mother in Guatemala. As a single mother, Guzman was unable to earn enough money to support her two children. She left for the United States without her children when E.G. was three years old and her half-brother was ten years old. Once in the United States, Guzman remained in contact with her children and attempted unsuccessfully to secure reliable care from members of E.G.'s extended family and a woman whom Guzman paid for child care services. Neither proved reliable. Consequently, E.G. was looked after by her half-brother or, when he was at school, left completely alone. Although initially E.G. attended kindergarten in Guatemala, after three months she had to stop going because the walk to school was far and too dangerous for E.G. to walk alone. On one occasion, E.G. suffered a head injury and was hospitalized after falling into a large hole. On another occasion, she was attacked by a stray dog when she was out on the street alone.

In 2014, with no possibility of a safe or secure life in Guatemala, E.G. and her brother left Guatemala for the United

States. The two children were captured while attempting to cross into the United States from Mexico. Following their capture in Texas, the Office of Refugee Resettlement contacted Guzman, who by then lived in Massachusetts, and released the children to her custody. Since that time, both children have lived with their mother and other members of their family in Massachusetts. Unlike in Guatemala, in the United States, E.G. lives with responsible adults who care for her, and she attends school.

After moving to the United States, Lopez made no effort to contact E.G. E.G. met Lopez for the first time when he appeared for a court-ordered paternity test, which the Department of Revenue had sought on E.G.'s behalf. Since that time, Lopez has not been in contact with E.G. and has provided little meaningful financial support. Although Lopez is aware that E.G. now lives in Massachusetts, the State where he also resides, he has expressed no interest in establishing a relationship with her.

Appearing as an interested party to the paternity suit, E.G. filed a motion for special findings pursuant to 8 U.S.C. § 1101(a)(27)(J),[8] as well as an affidavit from her mother. In

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[8] The State court must find (1) that the minor is "dependent on a juvenile court"; (2) that his or her "reunification with [one] or both . . . parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law"; and (3) that "it would not be in [his or her] best interest to be

her motion, E.G. stated her intent to petition for SIJ status and argued that she was dependent on the Probate and Family Court, that reunification with her father was not viable due to neglect and abandonment, and that it was not in her best interest to return to Guatemala. During the hearing on the paternity issue, the Probate and Family Court judge denied E.G.'s motion for special findings. While the judge did not explicitly articulate a reason for denying E.G.'s motion, she noted, "[E.G.] is in the custody of her mother, so I'm not doing special findings." E.G. appealed from this decision, and we transferred the case to this court on our own motion.

Discussion. 1. Statutory overview. We begin by providing an overview of the SIJ status provision. In 1990, Congress created the SIJ provisions of the Immigration and Nationality Act to enable immigrant children who have been subject to abuse, neglect, or abandonment by one or both of their parents to remain in the United States and apply for lawful permanent residence. Recinos, 473 Mass. at 734, 737, citing 8 U.S.C. § 1101(a)(27)(J) and 8 C.F.R. § 204.11 (2016). Applying for SIJ status entails a multistep process involving both State courts and Federal agencies. 8 U.S.C. § 1101(a)(27)(J). To apply to

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returned" to his or her home country. 8 U.S.C. § 1101(a)(27)(J).

the United States Citizenship and Immigration Services (USCIS)[9] for SIJ status, the "immigrant child"[10] must first obtain the following special findings from a "juvenile court":[11] (1) the child is dependent on a juvenile court or, under the custody of an agency or department of a State, or an individual or entity appointed by the court or State; (2) reunification with one or both parents is not viable due to abuse, neglect, or abandonment; and (3) returning the child to his or her country of origin would not be in the child's best interest. 8 U.S.C. § 1101(a)(27)(J).

After obtaining special findings, the immigrant child must file a petition, including the special findings, with USCIS. 8 C.F.R. § 204.11. Once submitted, USCIS conducts a plenary review of the petition. Id. See USCIS Policy Manual, vol. 6,

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[9] The United States Citizenship and Immigration Services (USCIS) bears responsibility for lawful immigration to the United States. See Recinos, 473 Mass. at 735 n.2.

[10] For purposes of special immigrant juvenile (SIJ) status, "child" is defined as a person under twenty-one years of age who is unmarried. 8 U.S.C. § 1101(b)(1).

[11] For the purposes of 8 U.S.C. § 1101(a)(27)(J), a "[j]uvenile court" is defined broadly as "a court located in the United States having jurisdiction under State law to make judicial determinations about the custody and care of juveniles." 8 C.F.R. § 204.11(a). In Massachusetts, determinations regarding the care and custody of juveniles fall within the jurisdiction of both the Juvenile Court and the Probate and Family Court, and thus both courts may make the requisite special findings under § 1101(a)(27)(J). Recinos, 473 Mass. at 738.

pt. J(4) (2016). As the United States notes in its amicus brief, during this review, USCIS generally defers to the juvenile court's determinations, and does not reweigh the evidence insofar as it relates to matters of State law. See USCIS Policy Manual, vol. 6, pt. J(3). Ultimately, USCIS, on behalf of the Secretary of Homeland Security, makes the final determination whether to grant SIJ status. See 8 U.S.C. § 1101(a)(27)(J)(iii); USCIS Policy Manual, vol. 6, pt. J(4)(E)(1) (noting that Department of Homeland Security delegates authority to consent to grant of SIJ classification to USCIS).

2. The role of the Probate and Family Court. Although "[t]he process for obtaining SIJ status is 'a unique hybrid procedure that directs the collaboration of [S]tate and [F]ederal systems," Recinos, 473 Mass. at 738, quoting H.S.P. v. J.K., 223 N.J. 196, 209 (2015), a person's immigration status remains a matter governed solely by Federal law. Thus, whether a child qualifies for SIJ status and whether to grant or deny an immigrant child's application for SIJ status is beyond the jurisdiction of the Probate and Family Court. The State court's role is solely to make the special findings of fact necessary to the USCIS's legal determination of the immigrant child's entitlement to SIJ status. 8 U.S.C. § 1101(a)(27)(J)(iii). Congress delegated this task to State courts because it

recognized "the distinct expertise State courts possess in the area of child welfare and abuse," which makes them best equipped to shoulder "the responsibility to perform a best interest analysis and to make factual determinations about child welfare for purposes of SIJ eligibility." Recinos, supra.

Because this fact-finding role is integral to the SIJ process, the Probate and Family Court judge may not decline to make special findings if requested by an immigrant child under § 1101(a)(27)(J). Acting within the limits of this fact-finding role, the judge must make the special findings even if he or she suspects that the immigrant child seeks SIJ status for a reason other than relief from neglect, abuse, or abandonment. The immigrant child's motivation for seeking the special findings, if relevant to the child's entitlement to SIJ status, ultimately will be considered by USCIS in its review of the application. The immigrant child's motivation is irrelevant to the judge's special findings.

The judge's obligation to make the special findings also applies regardless of whether the child presents sufficient evidence to support a favorable finding under each of the criteria set forth in § 1101(a)(27)(J). See Howlett v. Rose, 496 U.S. 356, 373 (1990), quoting Mondou v. New York, New Haven, & Hartford R.R., 223 U.S. 1, 57-58 (1912) ("'The existence of the jurisdiction creat[ed] an implication of duty to exercise

it,' . . . which could not be overcome by disagreement with the policy of the [F]ederal Act"). To conclude otherwise would upset the balance struck between the State and Federal roles in the SIJ status determination, and intrude in the area of immigration that lies exclusively within the purview of the Federal government. See Recinos, 473 Mass. at 738.

As further guidance for the judge to whom a motion for special findings has been presented, we direct that the findings be limited to the parent with whom the child claims reunification is not viable due to abuse, neglect, or abandonment. Thus, where an immigrant child asserts in her or his motion for special findings that reunification is not viable with only one parent, the Probate and Family Court shall limit its findings to that parent. In the event that the child asserts that reunification is not viable with both parents, the court shall make findings as to both parents. In our view, no more and no less is required of the Probate and Family Court to meet its statutorily mandated role.

We recognize the disparate approaches among State courts to this prong of the special findings required under the statute. Some State courts have interpreted the statute to mean that the immigrant child must establish that reunification is not viable as to both parents, while others have proceeded on the assumption that reunification is not viable if only one parent

has been shown to have abused, neglected, or abandoned the immigrant child. See, e.g., In re Israel O., 233 Cal. App. 4th 279, 288-289 (2015); In re Estate of Nina L., 2015 IL App (1st) 152223, ¶ 27; In re Interest of Erick M., 284 Neb. 340, 345-346 (2012); Matter of Marcelina M.-G. v. Israel S., 112 A.D.3d 100, 110-111 (N.Y. 2013). We doubt the wisdom in joining the debate among State courts over whether the immigrant child must demonstrate that reunification is not viable with only one or with both parents. We have considered and are persuaded by the reasoning in the United States's amicus brief and by the Supreme Court of New Jersey in H.S.P., 223 N.J. at 213, that interpretation of the "[one] or both" statutory language is not necessary. The State court's duty to make special findings is not dependent on the resolution of the ambiguous language, and thus we decline to endeavor to do so. See id. (declining to construe "[one] or both" language as used in § 1101[a][27][J] because "[s]uch a task is exclusively the province of the [F]ederal government").

3. Special findings for Yosselin. In the Probate and Family Court judge's written judgment of dismissal on the petition for appointment of guardianship, the judge addressed Yosselin's motion for special findings, but only as to the viability of the parental reunification prong. After concluding that Yosselin's mother did not intend to abandon her, the judge

posited that the sole reason for the guardianship petition was to allow Yosselin to request special findings and ultimately "take advantage of the [SIJ] [s]tatus program." The judge went on to note,

> "While it appears from her affidavit that she may have good reasons for leaving El Salvador, as an emancipated eighteen year old adult, Yosselin may now choose herself where she wishes to live. She is in a voluntary living arrangement with her uncle. The sole problem here is that she must find a legal way to re-enter this country if in fact she is deported. This [c]ourt does not find that 'reunification with one or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or similar basis found under State law.'"

Here again, the judge's special findings determination crossed into territory reserved to the Federal authorities. Instead of determining whether Yosselin's mother abandoned or neglected her under Massachusetts law, the judge focused on the alleged motive behind the petition for guardianship and the motion for special findings. This was error, as was the judge's failure to make findings as to the dependence on the Probate and Family Court and best interests prongs of the special findings as required by § 1101(a)(27)(J)(i)-(ii). The Probate and Family Court judge must make factual findings as to <u>all three prongs</u> of the special findings analysis, under all circumstances. Therefore, we reverse and remand Yosselin's case to the Probate and Family Court for further fact finding consistent with this opinion.

Moreover, although Yosselin asserted in her motion for special findings that reunification is not viable due to abuse and neglect by her mother, the record establishes that Yosselin also filed a motion for special findings as to her father. Yosselin is entitled to special findings on this motion as well, regardless of whether reunification with the mother is viable. To ensure that Yosselin, who is approaching her twenty-first birthday, may timely exercise her right to seek SIJ status, the Probate and Family Court shall conduct a hearing forthwith on both motions for special findings. While we express no view as to the substance of the special findings as to the mother, we note the judge's acknowledgement that Yosselin has never known her father and that, in fact, he is "unknown." In these circumstances, a finding that reunification with the father is not viable due to neglect or abandonment is difficult to avoid.

4. Special findings for E.G. In E.G.'s case, the Probate and Family Court judge failed to make any factual findings with respect to E.G.'s motion for special findings. Based on the record, the judge's reason for declining to make the special findings was due, at least in part, to the fact that E.G. is in her mother's custody. As we have said here, such a rationale for declining to make special findings is inconsistent with the role of the Probate and Family Court under § 1101(a)(27)(J). Therefore, we reverse and remand E.G.'s case to the Probate and

Family Court for further fact finding consistent with this opinion.

Because the Probate and Family Court judge declined to make special findings based on her review of documentary evidence, we "stand[] in the same position as did the [motion] judge" with respect to evaluating the written evidence and reaching a conclusion as to the special findings determination. See Commonwealth v. Novo, 442 Mass. 262, 266 (2004), quoting Berry v. Kyes, 304 Mass. 56, 57 (1939). Accordingly, we direct the Probate and Family Court judge to make the following findings: (1) E.G. is dependent on the Probate and Family Court; (2) E.G.'s reunification with her father is not viable due to abuse, neglect, or abandonment; and (3) it is not in E.G.'s best interest to return to Guatemala.

Based on the record before us, it is clear that E.G.'s father, the parent on whom the allegation of neglect and abandonment is predicated, has at the very least neglected, if not also abandoned the child. The Massachusetts Code of Regulations defines "[n]eglect" as

> "failure by a caretaker, either deliberately or through negligence or inability, to take those actions necessary to provide a child with minimally adequate food, clothing, shelter, medical care, supervision, emotional stability and growth, or other essential care; provided, however, that such inability is not due solely to inadequate economic resources or solely to the existence of a handicapping condition" (emphasis in original).

110 Code Mass. Regs. § 2.00 (2008). Since E.G.'s birth, Lopez has made no attempt to establish a parental relationship with E.G. or materially support her in a meaningful way. Prior to appearing for a court-ordered paternity test, Lopez made no effort to even meet E.G., despite her presence in Massachusetts.

Because it is clear from the record that Lopez has, at the very least, neglected E.G., she is, as a matter of law, "dependent on the Probate and Family Court for the opportunity to obtain relief." Recinos, 473 Mass. at 743. With respect to the second inquiry -- whether E.G.'s reunification with "[one] or both" of her parents is not viable due to abuse, neglect, or abandonment -- we reiterate that the court's findings will be limited to E.G.'s father. Thus, the fact that E.G. lives in the United States with her mother has no bearing on the judge's duty to make the special findings, or the substance of the finding. Accordingly, E.G. meets the criteria for the second prong of the special findings analysis.

Last, the record clearly establishes that E.G.'s interests are not best served by returning to Guatemala, the country of origin. If returned to Guatemala, E.G. would, once again, live with little if any adult supervision. In fact, her circumstances if forced to return to Guatemala would be even more dire considering that her adolescent brother, who looked

after her when the two were living in Guatemala, also lives in the United States.

5. Guardianship. Marvin also urges this court to find error in the Probate and Family Court judge's dismissal on the petition for appointment of a guardian. Because the outcome of the guardianship petition has no bearing on the outcome of this case, we decline to reach the issue.[12] First, any guardianship would have terminated on Yosselin's eighteenth birthday. Second, under Recinos, 473 Mass. at 743, if Yosselin can establish that reunification with her mother or father is not viable due to abuse, neglect, or abandonment, she as a matter of law is dependent on the Probate and Family Court for the opportunity to obtain SIJ status relief.

Conclusion. For the foregoing reasons, we reverse the judgments of the Probate and Family Court as to E.G.'s and Yosselin's motions for special findings, and remand the matters for proceedings consistent with this opinion.

So ordered.

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[12] We also decline to issue a stay sua sponte, as amici urge, for two reasons. First, although Marvin moved for a stay below, he has not moved for a reconsideration of the denial of the motion, nor has he raised the issue in his brief on appeal. Second, amici's arguments fail to justify a stay sua sponte.

TITLE 8 - ALIENS AND NATIONALITY
CHAPTER 12 - IMMIGRATION AND NATIONALITY
SUBCHAPTER I - GENERAL PROVISIONS

§ 1101. Definitions

(a) As used in this chapter—

(1) The term "administrator" means the official designated by the Secretary of State pursuant to section 1104 (b) of this title

(2) The term "advocates" includes, but is not limited to, advises, recommends, furthers by overt act, and admits belief in.

(3) The term "alien" means any person not a citizen or national of the United States.

(4) The term "application for admission" has reference to the application for admission into the United States and not to the application for the issuance of an immigrant or nonimmigrant visa.

(5) The term "Attorney General" means the Attorney General of the United States.

(6) The term "border crossing identification card" means a document of identity bearing that designation issued to an alien who is lawfully admitted for permanent residence, or to an alien who is a resident in foreign contiguous territory, by a consular officer or an immigration officer for the purpose of crossing over the borders between the United States and foreign contiguous territory in accordance with such conditions for its issuance and use as may be prescribed by regulations. Such regulations shall provide that

(A) each such document include a biometric identifier (such as the fingerprint or handprint of the alien) that is machine readable and

(B) an alien presenting a border crossing identification card is not permitted to cross over the border into the United States unless the biometric identifier contained on the card matches the appropriate biometric characteristic of the alien.

(7) The term "clerk of court" means a clerk of a naturalization court

(8) The terms "Commissioner" and "Deputy Commissioner" mean the Commissioner of Immigration and Naturalization and a Deputy Commissioner of Immigration and Naturalization, respectively

(9) The term "consular officer" means any consular, diplomatic, or other officer or employee of the United States designated under regulations prescribed under authority contained in this chapter, for the purpose of issuing immigrant or nonimmigrant visas or, when used in subchapter III, for the purpose of adjudicating nationality.

(10) The term "crewman" means a person serving in any capacity on board a vessel or aircraft.

(11) The term "diplomatic visa" means a nonimmigrant visa bearing that title and issued to a nonimmigrant in accordance with such regulations as the Secretary of State may prescribe

(12) The term "doctrine" includes, but is not limited to, policies, practices, purposes, aims, or procedures

(13)(A) The terms "admission" and "admitted" mean, with respect to an alien, the lawful entry of the alien into the United States after inspection and authorization by an immigration officer

(B) An alien who is paroled under section 1182 (d)(5) of this title or permitted to land temporarily as an alien crewman shall not be considered to have been admitted

(C) An alien lawfully admitted for permanent residence in the United States shall not be regarded as seeking an admission into the United States for purposes of the immigration laws unless the alien—

(i) has abandoned or relinquished that status,

(ii) has been absent from the United States for a continuous period in excess of 180 days

section of this chapter, or any other Act, or under any law amendatory of, supplementary to, or in substitution for, any of such sections or Acts

(20) The term "lawfully admitted for permanent residence" means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed.

(21) The term "national" means a person owing permanent allegiance to a state

(22) The term "national of the United States" means

(A) a citizen of the United States, or

(B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States.

(23) The term "naturalization" means the conferring of nationality of a state upon a person after birth, by any means whatsoever.

(24) Repealed Pub L. 102–232, title III, § 305(m)(1), Dec. 12, 1991, 105 Stat. 1750.

(25) The term "noncombatant service" shall not include service in which the individual is not subject to military discipline, court martial, or does not wear the uniform of any branch of the armed forces.

(26) The term "nonimmigrant visa" means a visa properly issued to an alien as an eligible nonimmigrant by a competent officer as provided in this chapter

(27) The term "special immigrant" means—

(A) an immigrant, lawfully admitted for permanent residence, who is returning from a temporary visit abroad;

(B) an immigrant who was a citizen of the United States and may, under section 1435 (a) or 1438 of this title, apply for reacquisition of citizenship;

(C) an immigrant, and the immigrant's spouse and children if accompanying or following to join the immigrant, who—

(i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States,

(ii) seeks to enter the United States—

(I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

(II) before September 30, 2012, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

(III) before September 30, 2012, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501 (c)(3) of title 26) at the request of the organization in a religious vocation or occupation, and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i),

(D) an immigrant who is an employee, or an honorably retired former employee, of the United States Government abroad, or of the American Institute in Taiwan, and who has performed faithful service for a total of fifteen years, or more, and his accompanying spouse and children Provided, That the principal officer of a Foreign Service establishment (or, in the case of the American Institute in Taiwan, the Director thereof), in his discretion, shall have recommended the granting of special immigrant status to such alien in exceptional circumstances and the Secretary of State approves such recommendation and finds that it is in the national interest to grant such status,

(E) an immigrant, and his accompanying spouse and children, who is or has been an employee of the Panama Canal Company or Canal Zone Government before the date on which the Panama Canal Treaty of 1977 (as described in section 3602 (a)(1) of title 22) enters into force [October 1, 1979], who was resident in the Canal Zone on the effective date of the exchange of instruments of ratification of such Treaty [April 1, 1979], and who has performed faithful service as such an employee for one year or more,

(F) an immigrant, and his accompanying spouse and children, who is a Panamanian national and

(i) who, before the date on which such Panama Canal Treaty of 1977 enters into force [October 1, 1979], has been honorably retired from United States Government employment in the Canal Zone with a total of 15 years or more of faithful service, or

(ii) who, on the date on which such Treaty enters into force, has been employed by the United States Government in the Canal Zone with a total of 15 years or more of faithful service and who subsequently is honorably retired from such employment or continues to be employed by the United States Government in an area of the former Canal Zone;

(G) an immigrant, and his accompanying spouse and children, who was an employee of the Panama Canal Company or Canal Zone Government on the effective date of the exchange of instruments of ratification of such Panama Canal Treaty of 1977 [April 1, 1979], who has performed faithful service for five years or more as such an employee, and whose personal safety, or the personal safety of whose spouse or children, as a direct result of such Treaty, is reasonably placed in danger because of the special nature of any of that employment,

(H) an immigrant, and his accompanying spouse and children, who—

(i) has graduated from a medical school or has qualified to practice medicine in a foreign state,

(ii) was fully and permanently licensed to practice medicine in a State on January 9, 1978, and was practicing medicine in a State on that date,

(iii) entered the United States as a nonimmigrant under subsection (a)(15)(H) or (a)(15)(J) of this section before January 10, 1978, and

(iv) has been continuously present in the United States in the practice or study of medicine since the date of such entry,

(I)

(i) an immigrant who is the unmarried son or daughter of an officer or employee, or of a former officer or employee, of an international organization described in paragraph (15)(G)(i), and who

(I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv) or paragraph (15)(N), has resided and been physically present in the United States for periods totaling at least one-half of the seven years before the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least seven years between the ages of five and 21 years, and

(II) applies for a visa or adjustment of status under this subparagraph no later than his twenty-fifth birthday or six months after October 24, 1988, whichever is later,

(ii) an immigrant who is the surviving spouse of a deceased officer or employee of such an international organization, and who

(I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv) or paragraph (15)(N), has resided and been physically present in the United States for periods totaling at least one-half of the seven years before the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least 15 years before the date of the death of such officer or employee, and

(II) files a petition for status under this subparagraph no later than six months after the date of such death or six months after October 24, 1988, whichever is later,

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(iii) an immigrant who is a retired officer or employee of such an international organization, and who

(I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv), has resided and been physically present in the United States for periods totaling at least one-half of the seven years before the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least 15 years before the date of the officer or employee's retirement from any such international organization, and

(II) files a petition for status under this subparagraph no later than six months after the date of such retirement or six months after October 25, 1994, whichever is later; or

(iv) an immigrant who is the spouse of a retired officer or employee accorded the status of special immigrant under clause (iii), accompanying or following to join such retired officer or employee as a member of his immediate family;

(J) an immigrant who is present in the United States—

(i) who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States, and whose reunification with 1 or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law;

(ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; and

(iii) in whose case the Secretary of Homeland Security consents to the grant of special immigrant juvenile status, except that—

(I) no juvenile court has jurisdiction to determine the custody status or placement of an alien in the custody of the Secretary of Health and Human Services unless the Secretary of Health and Human Services specifically consents to such jurisdiction; and

(II) no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter;

(K) an immigrant who has served honorably on active duty in the Armed Forces of the United States after October 15, 1978, and after original lawful enlistment outside the United States (under a treaty or agreement in effect on October 1, 1991) for a period or periods aggregating—

(i) 12 years and who, if separated from such service, was never separated except under honorable conditions, or

(ii) 6 years, in the case of an immigrant who is on active duty at the time of seeking special immigrant status under this subparagraph and who has reenlisted to incur a total active duty service obligation of at least 12 years,

and the spouse or child of any such immigrant if accompanying or following to join the immigrant, but only if the executive department under which the immigrant serves or served recommends the granting of special immigrant status to the immigrant,

(L) an immigrant who would be described in clause (i), (ii), (iii), or (iv) of subparagraph (I) if any reference in such a clause—

(i) to an international organization described in paragraph (15)(G)(i) were treated as a reference to the North Atlantic Treaty Organization (NATO),

(ii) to a nonimmigrant under paragraph (15)(G)(iv) were treated as a reference to a nonimmigrant classifiable under NATO-6 (as a member of a civilian component accompanying a force entering in accordance with the provisions of the NATO Status-of-Forces Agreement, a member of a

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2.00: continued

(e) cardio-vascular accident
(f) any fracture
(g) extensive bums
(h) severe cuts
(i) other similar severe injury
(j) other sudden signs of serious physical illness
(k) any condition where delay in treatment will endanger the life, limb or mental well being of the patient. See, M.G.L. c. 112, § 12F.

Possibility that a disease may deteriorate to an irreversible condition at an uncertain but relatively distant date is not an emergency. See, 104 CMR 2.11(3) and In the Matter of Guardianship of Richard Roe, 111, 421 N.E.2d 40, 55; 383 Mass. 415 (1981).

In determining whether a medical emergency exists the relevant time period to be examined begins when the claimed emergency arises, and ends when the individual who seeks to act in the emergency could, with reasonable diligence, obtain parental consent or judicial review, as applicable. See, Roe at 55.

Mental Health Facility means a public or private facility for the in-patient care or treatment or diagnosis or evaluation of mentally ill or menially retarded persons, except for the Bridgewater State Hospital. See M.G.L. c. 123, § 1. Community residential care facilities for children (as defined at 110 CMR 7.120) are not mental health facilities for purposes of 110 CMR.

Neglect means failure by a caretaker, either deliberately or through negligence or inability, to take those actions necessary to provide a child with minimally adequate food, clothing, shelter, medical care, supervision, emotional stability and growth, or other essential care; provided, however, that such inability is not due solely to inadequate economic resources or solely to the existence of a handicapping condition. This definition is not dependent upon location {i.e., neglect can occur while the child is in an out-of-home or in-home setting.)

No Code order means a medical order regarding a terminally ill patient directing a hospital and its staff not to use heroic medical efforts in the event of cardiac or respiratory failure. Heroic medical efforts include invasive and traumatic life-saving techniques such as intracardial medication, intracardial massage and electric shock treatment. No code orders include "do not resuscitate" orders or orders stated in different language attempting to accomplish substantially the same result as a "no code" order. See, Custody of a Minor, 385 Mass. 697, 434 N.E.2d 601 (1982).

Non-mandated Reporters are all persons who are not mandated reporters.

Open Referral means that a client may be referred to a provider in any fashion (including client self-referral) and that the provider may thereafter be reimbursed by the Department for delivering the service(s), regardless of how the client was referred to the provider. Compare, "Closed Referral".

Outreach means those Department activities conducted in the community to make the community aware of the philosophy of the Department, the variety of social services offered by the Department, the ways to obtain Department services, and the Department's desire to work in conjunction with other community resources and agencies to meet clients' needs. Outreach activity provides a way for the Department to identify existing resources, duplications and gaps in services, and unmet service needs in the community.

Partner means a non-Department entity that is providing cash contributions to a provider, which, when joined with Department funds, result in funding the total cost of one or more services which are provided by a provider.

Preadoptive Parent means a person approved by the Department to be an adoptive parent in accordance with 110 CMR 7.200 et seq.

Pre-adoptive Parent Applicant means a person who has applied to be an adoptive parent and meets the eligibility criteria established by 110 CMR 7.100 and 7.200.

Pre-adoptive Placement means the provision of substitute care by pre-adoptive parents, pending their adoption of the child placed in substitute care with them.

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

No. FAR-25867

ESWIN HERNANDEZ-LEMUS
Plaintiff-Appellant

v.

MARIA ESPERANZA ARIAS-DIAZ
Defendant-Appellee

CERTIFICATE OF SERVICE

Pursuant to Mass.R.A.P. 13(d), I hereby certify, under the penalties of perjury, that on this date of February 13, 2018 I have made service of a copy of the hereby attached Further Appellate Review on behalf of Eswin Hernandez-Lemus, upon the self represented, Defendant-Appellee, by first class mail to the following address:

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COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

16-P-1102

ESWIN E. HERNANDEZ-LEMUS

vs.

MARIA E. ARIAS-DIAZ.

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

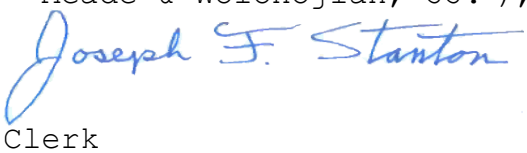
On October 6, 2015, Eswin E. Hernandez-Lemus (father) filed a petition in the Probate and Family Court to be granted custody of his son, Edwin E. Hernandez-Arias (Edwin). The father also filed a "Motion for Special Findings of Fact and Rulings of Law," requesting that the probate judge enter certain special findings as are necessary to establish Edwin's eligibility to apply to the United States Citizenship and Immigration Services for special immigrant juvenile (SIJ) status under the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(27)(J) (2012).[1] The probate judge granted the father's motion for sole

[1] In order for an alien juvenile to be eligible to seek SIJ status, the following must be satisfied: (1) that the juvenile is dependent on a "juvenile court," or under the custody of an agency or department of a State, or an individual or entity appointed by the court or State; (2) that reunification with one or both of the juvenile's parents "is not viable due to abuse, neglect, abandonment, or a similar basis found under State law";

legal and physical custody of Edwin but declined to enter the requested special findings. This timely appeal followed. After review of the record before us, we conclude that the probate judge's findings and disposition are supported by that record. We thus affirm.

Judgment affirmed.

By the Court (Trainor, Meade & Wolohojian, JJ.[2]),



Clerk

Entered: January 2, 2018.

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and (3) that it would not be in the juvenile's best interest to return to his or her country of nationality. 8 U.S.C. § 1101(a)(27)(J)(i)-(ii). See Guardianship of Penate, 477 Mass. 268, 273-274 (2017). "It is not the [State] court's role to engage in an immigration analysis or decision." Recinos v. Escobar, 473 Mass. 734, 738 (2016). A judge's entry of special findings is not a final determination on whether the juvenile meets the SIJ status requirements, rather, such special findings are the first step in the SIJ status process. Ibid.

[2] The panelists are listed in order of seniority.